

CLERK, U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
APR 14 2004  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case No.  
ROBERT J. KROHN, ) 01-62938-fra7  
Debtor. )  
ROBERT J. KROHN, ) Adversary Proceeding No.  
Plaintiff, ) 03-6426-fra  
vs. )  
ELIZABETH J. DEMPSEY, )  
Defendant. ) MEMORANDUM OPINION

Plaintiff seeks a judgment for money damages and other relief based on his claim that Defendant has violated the discharge injunction provided for in 11 U.S.C. § 524(a). Having considered Plaintiff's motion for summary judgment on the issue of liability, I find that, based on the undisputed facts of this case, Defendant is not liable, and that judgment should be entered dismissing the adversary proceeding.

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PAGE 1 - MEMORANDUM OPINION

1 I. FACTS

2 The facts of this case are found primarily in the public  
3 record, and are undisputed. The creditor (Defendant herein)  
4 obtained a judgment against the Debtor (Plaintiff) from the Circuit  
5 Court for Marion County on January 31, 2001. The judgment  
6 constituted a lien against any real property owned by the Debtor at  
7 that time. ORS 18.150. Thereafter the property was transferred to  
8 a third person, apparently subject to the lien. For the purposes of  
9 this opinion, the Court will assume that the lien was on the  
10 property at the time it was transferred.

11 Debtor filed a petition for relief under Chapter 7 of the  
12 Code on April 20, 2001. In an adversary proceeding initiated by the  
13 creditor seeking to except her claim from discharge, the Court held  
14 in favor of the Debtor, and that the claim would be discharged. The  
15 case closed thereafter.

16 On October 31, 2003, the creditor caused the Circuit Court in  
17 Marion County to issue a writ of execution directed to the sheriff.  
18 The sheriff was instructed to sell the real property previously  
19 owned by the Debtor.

20 The Debtor now brings this action, claiming that causing the  
21 Circuit Court to issue the writ violated his rights under the  
22 discharge injunction.

23 II. PROCEDURE

24 The Ninth Circuit Bankruptcy Appellate Panel has held that  
25 there is no private right of action for violation of the discharge  
26 injunction of Code § 524(a). Bassett v. American Gen. Fin., Inc.,

1 255 B.R. 747, 753-57 (BAP 9<sup>th</sup> Cir. 2000). Plaintiff's complaint  
2 must, therefore, be treated as a request for sanctions under Code §  
3 105(a). The ability of the court to sanction a party for violation  
4 of its orders is central to administration of bankruptcy estates and  
5 must therefore be considered a core proceeding. 28 U.S.C. §  
6 157((b)(2)(A)).

7 Summary judgment is appropriate when the pleadings,  
8 depositions, answers to interrogatories, admissions, and affidavits,  
9 if any, show that there is no genuine issue of material fact and the  
10 moving party is entitled to judgment as a matter of law. Fed. R.  
11 Civ. P. 56, made applicable by Fed. R. Bankr. P. 7056. The movant  
12 has the burden of establishing that there is no genuine issue of  
13 material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).  
14 The primary inquiry is whether the evidence presents a sufficient  
15 disagreement to require a trial, or whether it is so one-sided that  
16 one party must prevail as a matter of law. Anderson v. Liberty  
17 Lobby, Inc., 477 U.S. 242, 247 (1986).

18 "When one party moves for summary judgment and at a hearing  
19 the record reveals no genuine dispute on a material fact, 'the  
20 overwhelming weight of authority supports the conclusion that . . .  
21 the court may *sua sponte* grant the summary judgment to the non-  
22 moving party'." Kassbaum v. Steppenwolf Productions, Inc., 236 F.3d  
23 487, 494 (9<sup>th</sup> Cir. 2000) (citing Golden State Transit Corp. v. City  
24 of Los Angeles, 563 F.Supp. 169, 170-71 (C.D.Cal. 1983)).

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1 III. DISCUSSION

2 Unless avoided or vacated by order of the bankruptcy court,  
3 an otherwise valid lien is not affected by the bankruptcy discharge.  
4 In re Cortez, 191 B.R. 174, 177 (BAP 9<sup>th</sup> Cir. 1995) (citing Dewsnup  
5 v. Timm, 502 U.S. 410, 418 (1992)). Thus, after the bankruptcy case  
6 was closed, there was no impediment under the Bankruptcy Code to  
7 creditor's proposed foreclosure of her judgment lien on the subject  
8 property. At oral argument the Debtor appears to concede this  
9 point, but maintains that, since more than real property is  
10 implicated by the writ as issued, the exposure of other property  
11 owned by the Debtor to levy or execution constituted a violation of  
12 the discharge injunction. However, there is more involved under  
13 Oregon law governing enforcement of judgements.

14 The writ of execution was issued pursuant to ORS 18.468, and  
15 followed a standard form typically used in this state. See  
16 *Creditor's Rights and Remedies* (Oregon CLE 2002), Ch. 6, Form 6-1.  
17 As required by the statute, the writ commands the sheriff to

18 [S]atisfy, out of the personal property of said KROHN  
19 HOMES, INC., an Oregon corporation, and Robert J.  
20 Krohn, dba Krohn Homes, Inc., or if sufficient  
21 personal property cannot be found, then out of the  
22 real property belonging to said defendants Krohn  
23 Homes, Inc., an Oregon corporation, and Robert J.  
24 Krohn, dba Krohn Homes, in your county on or after the  
25 said January 31, 2001 (excepting such as the law  
26 exempts), the sum of \$140,000 now due on the judgment  
together with interest upon said sum at the rate of 9%  
per year from December 1, 2000, and also the costs of  
this writ and make due return hereon within 60 days  
after you have received this writ.

25 It is the directive against the Debtor's personal property  
26 which he claims offends the discharge injunction. As Debtor's

1 counsel put it at oral argument, it may have been the creditor's  
2 intention to foreclose on the real property, but there was nothing  
3 to keep her from going after the Debtor's car.

4 This argument overlooks the fact that issuance of the writ is  
5 only part of the statutory scheme for satisfaction of judgments out  
6 of a judgment debtor's property. ORS 18.468(4) provides that

7 If the judgment does not require that specific real or  
8 personal property of the judgment debtor be sold or  
9 delivered, the writ may direct the sheriff to sell the  
10 real or personal property specified by the judgment  
11 creditor in instructions given to the sheriff. *The*  
12 *judgment creditor must provide the sheriff with*  
*instructions that particularly describe the personal*  
*property to be seized and indicate where the property*  
*may be found. The judgment creditor must provide the*  
*sheriff with instructions that particularly describe*  
*any real property to be sold.*

13 (Italics added).

14 The statutory scheme in Oregon requires that the judgement  
15 creditor obtain an appropriate writ of execution from the clerk, and  
16 deliver the writ together with instructions to the sheriff  
17 describing the specific property to be levied upon. See *Creditor's*  
18 *Rights and Remedies* (Oregon CLE 2002) §§ 6.4, 6.6.


19 In the absence of an explicit instruction to the sheriff to  
20 seize property not subject to a pre-bankruptcy lien, the boilerplate  
21 in the writ of execution had no legal effect. Since the creditor's  
22 lien on the real property was unaffected by the bankruptcy, she  
23 retained the right to seek sale of the property subject to the lien.  
24 It follows that issuance of the writ, without instructions limited  
25 to sale of the property subject to the pre-petition lien did not  
26 violate the discharge injunction.

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IV. CONCLUSION

Defendant did not violate the discharge injunction. Since no other conclusion is possible from the facts of this case, summary judgment shall be granted to Defendant dismissing the adversary proceeding.

The foregoing constitutes the Court's findings of fact and conclusions of law. Counsel for the Defendant shall submit to the Court a form of judgment dismissing the complaint, and awarding costs, but not attorney's fees.<sup>1</sup>

  
FRANK R. ALLEY, III  
Bankruptcy Judge

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<sup>1</sup> There is no general right to attorney fees in litigating matters under the Bankruptcy Code. In re Baroff. 105 F.3d 439 (9<sup>th</sup> Cir. 1997).